Supreme Court, U.S.
FILED

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No. _____

In The

Supreme Court of the United States

October Term, 2001

Robert Mueller

Petitioner,

v.

Commissioner of Internal Revenue

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

Robert Mueller
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Pro se

53 pp

QUESTIONS PRESENTED FOR REVIEW

Homosexuals comprise approximately 10% of the population of the United States of America, yet they and their families have not been given recognition by Congress when formulating national legislation, especially tax legislation. Although the purpose of tax legislation is ostensibly to fund the federal government, it is also used to encourage modes of behavior and economic actions. Exclusion implies that second-class citizenship for homosexuals is acceptable; it is not.

This case presents a claim that exclusion violates three principles of the United States Constitution – equal protection, separation of church and state, and cruel and unusual punishment. In addition, such exclusion is both a civil rights and a human rights violation that this Court is asked to rectify.

The United States Tax Court issued a decision that attempted to address the issues presented, to justify the way the laws treat homosexuals, but it failed to justify the discrimination in the eyes of the petitioner. The Court of Appeals issued a vague decision, an avoidance of the issues. The Court of Appeals then applied rule 42(b) and (c) to suppress publication of the case and its decision. An en banc request to review and clarify the decision was tabled. This Court is now asked to review those decisions based on the following:

Equal protection. Are homosexual Americans denied equal protection under the tax laws and other statutes of the United States of America? Homosexuals do form families. These families have a right to recognition and protection

QUESTIONS PRESENTED FOR REVIEW –Continued

under the laws of the United States of America. Without recognition of their families, homosexuals are required to pursue formal methods for ensuring their families are provided for. These are steps heterosexual couples are granted through a single term – marriage. A similar status should be available to homosexuals.

Separation of church and state. Does failure to recognize homosexual partners violate the constitutional principles of separation of church and state? There is no rational basis for discriminating against homosexuals. Many churches do so, but that is their right under the separation of church and state. However, the state does not have such a right to discriminate without providing a rational basis for such action.

Cruel and unusual punishment. Does failure to recognize homosexual partners as a family unit constitute cruel and unusual punishment? Many of the laws passed by the federal government are to aid in stability of the family unit, yet no such family unit is defined for homosexuals. Homosexuals are considered permanently single in the eyes of the law. This is cruel because it ignores the reality of homosexual lives, and it is unusual because it singles out 10% of the population.

Constitutionality of the Defense of Marriage Act. Is the Defense of Marriage Act constitutional? This act, although passed in 1996, represents the attitudes of Congress for many years. It is just a bold step where Congress decided it could codify its discriminatory attitudes. This act should be reviewed within the framework of this case. A ruling on its

QUESTIONS PRESENTED FOR REVIEW –Continued

constitutionality is necessary to minimize the discriminatory undercurrents of its passage.

This document should be construed liberally under the teachings of Haines v. Kerner, 404 US 519 (1972).

LIST OF ALL PARTIES

Petitioner Robert Mueller is an individual presenting the case pro se. He is a citizen of the United States who has standing as a homosexual.

Respondent Commissioner of Internal Revenue is the federal office responsible for enforcement of the tax laws of the United States of America.

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PETITION FOR WRIT OF CERTIORARI

The Petitioner requests that the Supreme Court (a) exercise this Court's supervisory power with respect to the tax and appellate courts to review the Seventh Circuit's ruling denying homosexual partners recognition and status equal to heterosexual marriage (Appendix 1) and (b) issue a writ of certiorari to decide an important issue of federal law that should be examined by the Federal Courts of the United States of America.

JURISDICTION

Under 28 U.S.C. Sec. 1291, the Supreme Court of the United States shall have jurisdiction over decisions of Court of Appeals following all final decisions of the Tax Court of the United States. Final judgment was entered in this action by the Honorable David Laro on July 14, 2000. On April 8, 2001, the Seventh Circuit Court denied hearing of an appeal.

STATEMENT OF THE CASE

There are 15-30 million homosexuals in the United States, many of whom have families that are not recognized by the government of the United States of America. A better approximation is not known because Congress has refused to fund studies to find out how many people are homosexuals and how they are affected by the laws of the United States.

Under the Constitution of the United States, individuals are not allowed to sue Congress, so this group identified as homosexuals has limited recourse to the actions of that body. Surrogates such as the Commissioner of Internal Revenue must be used to approach the Courts to address issues of discrimination and unequal treatment. In Boy Scouts v. Dale, the Supreme Court held that private organizations can discriminate against homosexuals. This case asks whether public organizations like the United States Congress have the same right to discriminate.

The filing of a tax return has many more implications than merely determining how much money is transferred from an individual to the federal government. This form is how an individual identifies his/her family unit to the federal government. As stated several times in Judge Laro's ruling (Appendix A), homosexuals in the United States are assigned a single status when it comes to taxation, while heterosexuals have options. Heterosexuals are given a means by the state to document their families; homosexuals are not. Recently Vermont became the first and only state to grant that right to homosexuals, but even those who get a document from the state of Vermont are refused recognition at the federal level.

Judge Laro is to be commended for addressing the issues presented. Most of the Courts the Petitioner has dealt with try to avoid the issue (Seventh Circuit opinion, Appendix B). However, Judge Laro's arguments are based on decisions that supported the status quo before society started evolving into acceptance and support for homosexuals, the status quo Congress is attempting to preserve when it passes laws like the Defense of Marriage Act.

The preamble of the charter of the United Nations contains these phrases:

> to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and
>
> to promote social progress and better standards of life in larger freedom,
>
> to practice tolerance and live together in peace with one another as good neighbours,

Social progress, tolerance and fundamental human rights are what this case is about.

First, let us talk about equal protection. Judge Laro's decision implies that equal protection applies only to "suspect classes". This is not true as exemplified by recent affirmative action debates and recent equal protection cases like Saenz v. Roe and Bush v. Gore. The petitioner does not seek to create another suspect class, although there is plenty of evidence to support the idea that homosexuals would qualify for such protection. Adding another group to the list is not the answer. We as a society must be open enough, mature enough, to

judge primarily on merit and individual circumstances. That is how "social progress and better standards of life" will be achieved. "Equal protection" is the way it has been phrased in the United States Constitution.

Equal protection is violated in the tax laws when a Court can conclude that the appropriate filing status for homosexuals is single - period. Both the petitioner and the Court cited GAO/GGD-96-175, the report on single v. married taxpayers. The Court concentrated on the finding that married status is not always favorable. The petitioner concentrates on the fact that "married" people have options to choose how to deal with the favorable and unfavorable conditions. This case asks that those options be extended to homosexuals.

Heterosexuals have the options to remain single, cohabitate, and marry. Homosexuals have the first two options; the federal government does not recognize the third option, and, in fact, has legislated against it or an equal option in the Defense of Marriage Act. The petitioner is pursuing the ideas presented in Braschi v. Stahl Associates, 74 N.Y.2d 201, 543 N.E.2d 49, 544 N.Y.S.2d 784 (1989):

> A more realistic, and certainly equally valid, view of a family includes two adult lifetime partners whose relationship is long-term and characterized by an emotional and financial commitment and interdependence

And from Seattle, Washington, city ordinance 117244:

> WHEREAS, significant changes in our society have resulted in the creation of diverse living

> arrangements and the development of an expanded concept of the family unit; and
>
> WHEREAS, many of these living arrangements Involve long-term committed relationships of unmarried persons; and
> WHEREAS, the City of Seattle recognizes that families and other long term committed relationships foster economic stability and emotional and psychological bonds; and ...

And from the Surgeon General of the United States on June 28, 2001:

> Sexual orientation is usually determined by adolescence, if not earlier, and there is no valid scientific evidence that sexual orientation can be changed. Nonetheless, our culture often stigmatizes homosexual behavior, identity, and relationships. These anti-homosexual attitudes are associated with psychological distress for homosexual persons and may have a negative impact on mental health, including a greater incidence of depression and suicide.

Judge Laro wants to group homosexuals with unmarried heterosexuals and extended families. This grouping is not supported by the reality of modern society. In adapting new standards for the health care industry, even the Health and Human Services Department incorporated an American National Standards Institute standard, ANSI X12 837, Version 004010X096, May, 1999, that includes a separate relationship code for homosexual partners v. the

other groups Judge Laro cited. This is in response to the changes that have been happening in the private sector that Congress, as the leader of the public sector, has chosen to ignore.

In footnote 4 of Judge Laro's decision, he incorrectly represents the Petitioner in stating "Petitioner claims that the Federal tax laws specifically began to target homosexuals as a group after the enactment of the Defense of Marriage Act(DOMA)." What the Petitioner has stated is that Congress felt bold enough to codify discrimination in 1996 with the Defense of Marriage Act. The discrimination has been present for many years, but it has seldom been so openly demonstrated as in 1996. See Appendices C and D, excerpts from the Congressional Record from the debates on DOMA. In those debates, one can read about the Family and Medical Leave Act, where homosexual families were purposely excluded.

The use of the term "marriage" and "spouse" are sources of de facto discrimination against homosexuals, as Congress was well aware that no state had established a procedure for recognizing homosexual families. The Defense of Marriage Act grew out of a fear that Hawaii might establish such recognition, which could then spread to other states. (Hawaii went to the extent of amending its state constitution to redefine equal protection, but Vermont has since established civil unions as a "separate but equal" status within the state.) The DOMA definition has now found itself into recent tax laws. Targeted discrimination has been in the federal laws for a long time; the difference is now it has been openly codified. Therefore, the principle of equal protection is being violated.

Second, let us deal with the principle of separation of church and state. Even religious institutions in the United States and throughout the world are confronting or being confronted with how homosexuals are treated. In the United States, because of the separation of church and state, heterosexuals who choose to have a religious ceremony must also have a secular document issued by the state to recognize their union (common law marriage being an exception). Homosexuals can find religious institutions to perform similar ceremonies, but only Vermont currently offers the secular document, and that is not recognized by the federal government. Knowing full well that most states do not offer such recognition, Congress, in passing the Defense of Marriage Act, endorsed continuation of this de facto discrimination. One only has to scan GAO/OGC-97-16 Defense of Marriage Act to get an idea of the harm caused by use of the current definition of "married" and "spouse". And as one reads the Congressional Record, several legislators cite religious reasons for their positions. Because of the principle of separation of church and state, a rational basis and a valid governmental interest must be provided when classifications cause harm. There is no rational basis and there is no valid government interest in discriminating against homosexuals; in fact, the exact opposite is true. Non-discrimination is an ideal of this country, yet, in dealing with 10% of the population, it is now codified discrimination.

Finally, let us deal with the issue of cruel and unusual punishment. The best estimates are that homosexuals comprise 5-12% of the population of the United States. Congress has on several occasions been asked to do studies, most recently during the DOMA debates, but it has continually denied funding for such a study. Appendices C

and D show that Congress is aware of the issue, but it refuses to examine it further. The Defense of Marriage Act is a cruel act because it refuses to consider the idea that homosexuals have families. Think of how often one hears the term "family" during a political campaign. Now think about being a homosexual with a partner who knows that the term does not apply to him/her. Is there anything crueler than not recognizing one's family? And now it is codified at the federal level against 10% of the population; unusual, yes.

Taxes are used to fund support for families for both current and future needs. Because homosexuals do not have a mechanism for gaining government recognition of their families, they must find means to identify their families that heterosexuals do not need when they "marry". From Romer v. Evans (116 S.Ct. 1624),

> the protection of general laws and policies that prohibit arbitrary discrimination in governmental and private settings
> In any event, even if, **as we doubt,** homosexuals could find some safe harbor in laws of general application.

In theory, Congress was trying to correct a valid problem with the Defense of Marriage Act. Until that act, state law was the sole determination of the definition of "marriage", "married", and "spouse", throughout federal law, including tax law. This violates many Constitutional principles. Recent Supreme Court rulings in Saenz v. Roe, redefined the principle of state-to-state movement – violated by use of state law; and Bush v. Gore talks about uniform standards as a requirement for equal protection. The Defense of Marriage Act would have been a step in the right direction

had it established a national standard for homosexual as well as heterosexual families. In reality, it did neither, re-endorsing this vague idea of a legal union "between one man and one woman" as husband and wife. The definition of legal union is missing, so even if the discriminatory nature of the law were not present, the law would be dismissed as vague and ineffective. But the law further violates another of the key points in Saenzv. Roe, the principle that cost is not a valid reason for denial of equal protection. Yet cost and religious reasons are the two major reasons given in the Congressional Record for refusing to recognize homosexual families. This further substantiates the Constitutional violations the petitioner presents – equal protection, separation of church and state, and cruel and unusual punishment.

REASONS FOR GRANTING THE PETITION

Judge Laro in his decision states "Petitioner is homosexual." Twenty years ago this would have been a demeaning accusation. Through the evolution of society, that means only that petitioner has standing.

One of the few cases so far to recognize gay partnerships is In re Kowalski, 478N.W. 2d 790, Minn. App (1991), where guardianship of an auto accident victim was given to the partner over the parents. My partner has a drug addiction for which he recently went through a rehabilitation program. This treatment was made possible because the company I work for offers partner insurance to its employees. Appendix E is a letter from my current employer regarding those benefits. In addition to GAO/OGC-97-16 Defense of Marriage Act, this provides "real world" evidence of the harm and unequal treatment homosexual families must deal with on a daily basis. We are not talking small numbers. We are talking approximately 25 million Americans who do not feel free to support their friends and families because they fear repercussions from work, associates, and government.

This is not a unique issue for the United States of America. This is an issue that much of the world is starting to deal with. Unfortunately, the United States has chosen to deal with it by passing the Defense of Marriage Act. The law may not have been in effect during the years in question, but the attitudes that led to its passage certainly were. This law would be considered frivolous if it were not for the discrimination behind its enactment. The Court is requested to void the law, preferably with a suggestion that the law be

re-enacted with a clause that supports homosexuals as well as heterosexuals.

The United States needs to be a leader in human rights throughout the world. The treatment of homosexuals is an area where we are currently failing. The petitioner can only offer the Courts the opportunity to review and rectify the situation. As former Chief Judge Richard Posner of the Seventh Circuit writes in his book Sex and Reason, homosexuals deserve equal treatment and recognition; we just won't call it marriage.

Respectfully submitted,

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Appendix A

T.C. Memo. 2000-132

UNITED STATES TAX COURT

ROBERT D. MUELLER, Petitioner v.
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 15289-98 Filed April 12, 2000

P failed to file Federal income tax returns for the years 1986 through 1995. In the notice of deficiency mailed to P, R determined that P's proper filing status for the years before the Court was single. P was not married during the years in issue, but was involved in a long-term relationship with a same-sex partner, with whom he shared income and assets. Held: marital classifications in the Federal tax code are not unconstitutional; thus P was not entitled to a filing status other than single. Held, further, P is liable for the deficiencies determined by R. Held, further, P is liable for the additions to tax under secs. 6651(a) (1) and 6654, I.R.C.

Robert D. Mueller, pro se

Joseph T. Ferrick and William E. Bogner, for respondent

MEMORANDUM FINDINGS OF FACT AND OPINION

LARO, Judge: On July 6, 1998, respondent issued a notice of deficiency to petitioner determining deficiencies in and additions to his Federal income taxes for the years and in the amounts as follows:

		Additions to Tax	
Year	Deficiency	Sec. 6651(a)(1)	Sec. 6654
1986	$12,067	$1,284	$165
1987	6,675	1,172	225
1988	28,231	7,058	1,816
1989	25,087	6,272	1,697
1990	32,125	8,031	2,103
1991	33,841	8,460	1,934
1992	32,282	8,071	1,408
1993	31,642	7,587	1,265
1994	23,751	4,617	928
1995	23,426	4,503	944

The issues for the decision are:

(1) Whether petitioner is entitled to a filing status other than "single" in recognition of his claim that he has an "economic partnership" with a same-sex individual with whom he resided from 1989 to 1996; (2) whether petitioner is liable for the additions to tax determined by respondent under section 6651(a)(1); and (3) whether petitioner is liable for the additions to tax determined by respondent under section 6654. We hold for respondent on all issues.

Unless otherwise states, section references are to the Internal Revenue Code in effect for the years in issue, and Rule references are to the Tax Court Rules of Practice and Procedure. Dollar amounts are rounded to the nearest dollar.

FINDINGS OF FACT

Petitioner resided in Chicago, Illinois, when he petitioned the Court. Petitioner did not file Federal income tax returns for any of the taxable years 1986 through 1995. During those years petitioner earned the bulk of his income by working as a computer programmer/consultant for various companies and hospitals. Petitioner also had small amounts of interest and capital gain income in 1987.

Petitioner made no estimated tax payments to the Internal Revenue Service with respect to any of the years in issue. However, petitioner had the following amounts withheld from his wages:

Year	Withholding
1987	$1,986
1988	1,295
1989	5,283
1990	5,413

Petitioner is homosexual. In 1989, petitioner began a relationship with another man whom petitioner describes as his roommate and partner. From 1989 through 1995 petitioner and his partner resided together and shared assets and income. Petitioner was not married (to his partner or anyone else) as of December 31 for any of the taxable years 1986 thru 1995. In the notice of deficiency mailed to petitioner, respondent

determined that petitioner's proper filing status for income tax purposes for each year before the Court was single.

Accordingly, respondent calculated the deficiencies and additions to tax using the tax rates applicable to unmarried individuals pursuant to section 1 (c).

OPINION

Petitioner does not challenge the facts on which respondents determinations are based. (F1) Petitioner's sole claim in this case is that he should be accorded married, rather than single, filing status on his tax returns for the years 1989 to 1995. Petitioner does not claim to have ever been married. partnership Rather, petitioner argues that he had an "economic" with his roommate and that he is unconstitutionally denied the opportunity to file a joint return with him in recognition of such partnership. Petitioner references a number of constitutional provisions, but we understand the crux of petitioner's constitutional claim to be that the tax code's unequal or differential treatment between married taxpayers and unmarried taxpayers in an economic partnership constitutes a violation of the due process notions implicit in the Fifth Amendment and of the equal protection standards incorporated thereunder. (F2)

We have consistently denied constitutional challenges to marital classifications in the tax code. These have included challenges brought by disadvantaged married taxpayers, (F3) see DeMars v. Commissioner, 79 T.C. 247 (1982); Druker v. Commissioner, 77 T.C. 867 (1981), affd. On this issue and revd. In part 697 F.2d 46 (2d Cir. 1982); Brady v. Commissioner, T.C. Memo. 1983-163, affd. Without published opinion 729 F 2d 1445 (3d Cir. 1984), as well as by

disadvantaged singles, see Kellems v. Commissioner, 58 T.C. 556 (1972), affd. Per curiam 474 F.2d 1399 (2d Cir. 1973). Other Federal courts have similarly upheld marital classifications in the tax code. See, e.g., Mapes v. United States, 217 Ct. Cl. 115, 576 F.2d 896 (1978); Jansen v. United States, 441 F. Supp. 20 (D. Minn. 1977), affd. per curiam 567 F.2d 828 (8th Cir. 1977); Johnson v. United States, 422 F. Supp. 958 (N.D. Ind. 1976), affd. per curiam sub nom. Barter v. United States, 550 F.2d 1239 (7th Cir. 1977).

Petitioner seeks to add a new gloss to these old challenges by identifying singles who share assets and income (whom he labels "economic partners") as a distinct class of taxpayers disadvantaged by marital classifications. For the reasons set forth below, we hold the tax code's distinctions between married taxpayers and unmarried economic partners to be constitutionally valid.

In evaluating whether a statutory classification violates equal protection, we generally apply a rational basis standard. See Regan v. Taxation With Representation, 461 U.S. 540, 547 (1983). We apply a higher standard of review only if it is found that the statute (1) impermissibly interferes with the exercise of a fundamental right or (2) employs a suspect classification, such as race. See, e.g., id.; Harris v. McRae, 448 U.S. 297, 322 (1980). Neither of these exceptions applies.

Petitioner does not directly identify any fundamental right impeded by the use of marital classifications in the tax code. Petitioner cites commentary addressing the right to marry. However, a law is considered to burden the right to marry only where the obstacle to marriage imposed by the law operates to preclude marriage entirely for a certain class of persons. See DeMars v. Commissioner, supra at 250. The

classifications at issue in this case are a consequence, not a cause, of petitioner's nonmarried status, and thus do not burden the right to marry. See Druker v. Commissioner, 697 F.2d at 50.

The marital classifications at issue also do not affect petitioner as a member of a suspect class. Petitioner claims discrimination not as a homosexual but as a person who shares assets and income with someone who is not his legal spouse. Petitioner therefore places himself in a class that includes nonmarried couples of the opposite sex, family members, and friends. We are aware of no authority that would render such a group a suspect class. (F4)

Under the rational basis standard, a challenged classification is valid if rationally related to a legitimate governmental interest. See City of Cleburne v. Cleburne Living Ctr., Inc., 473 U.S. 432, 440 (1985); City of New Orleans v. Dukes, 427 U.S. 297, 303 (1976). In Kellems v. Commissioner, 58 T.C. 556 (1972), affd. 474 F.2d 1399 (2d Cir. 1973), we addressed the constitutionality of the application of single return rates without the income-splitting benefit available to married taxpayers. We held therein that the classification between married and single taxpayers is founded upon a rational basis and was a permissible attempt to account for the greater financial burdens of married taxpayers and to equalize geographically their tax treatment. (F5). See id., at 558-559.

Our holding in Kellems is of no less application here. Congress had a rational basis for adopting marital classifications in the tax code. That conclusion is not altered by petitioner's claim that there are additional classifications that could be made. Undoubtedly, certain inequalities persisted between married taxpayers and unmarried economic

partners following the enactment of the joint filing provisions. However, legislatures have especially broad latitude in creating classification and distinctions in tax statutes. See Regan b. Taxation With Representation, supra at 547. Moveover, "reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind." Williamson v. Lee Optical Co., 348 U.S. 483, 489 (1955).

While petitioner makes several arguments on policy and sociological grounds, in the face of the cases cited above to the contrary, they have no legal bearing on the issues in this case. Whether policy considerations warrant narrowing of the gap between the tax treatment of married taxpayers and homosexual and other nonmarried economic partners is for Congress to determine in light of all the relevant legislative considerations. See Druker v. Commissioner, 697 F.2d at 51.

Accordingly, we sustain the deficiencies determined by respondent. (F6)

2. Addition to Tax Under Section 6651 (a) (1)

Respondent determined additions to tax under section 6651 (a) for petitioner's failure to file his 1986 through 1995 Federal income tax returns. In order to avoid this addition to tax, petitioner must prove that his failure to file was: (1) Due to reasonable cause and (2) not due to willful neglect. See sec. 6651 (a); Rule 142 (a); United States v. Boyle, 469 U.S. 241, 245 (1985); United States v. Nordbrock, 38 F.3d 440 (9th Cir. 1994). A failure to file a timely Federal income tax return is due to reasonable cause if the taxpayer exercised ordinary business care and prudence and, nevertheless, was unable to

file the return within the prescribed time. See sec. 301.6651-1(c)(1), Proced. & Admin. Regs. Willful neglect means a conscious, intentional failure to file or reckless indifference. See United States v. Boyle, supra at 245.

Petitioner has offered no evidence to show that his failure to file was due to reasonable cause and not willful neglect. The evidence is clear that petitioner's actions were deliberate, intentional, and in complete disregard of the statutes and respondent's regulations. Petitioner made no attempt to file an authentic tax return for any of the years at issue.

Petitioner offers the "excuse" that his nonfiling was as an act of "non-violent civil disobedience" on a "human rights issue". As we stated in Klunder v. Commissioner, T.C. Memo. 1991-489: "Petitioner wants the best of both worlds, to civilly disobey and also to be absolved of the additions to tax." Whether or not petitioner considers his nonfiling an act of civil disobedience, he must accept the consequences of actions knowingly taken. See Kahn v. United States, 753 F. 2d 1208, 1215-1216 (3d Cir. 1985); United States v. Malinowski, 472 F. 2d 850, 857 (3d Cir. 1973); Reiff v. Commissioner, 77 T.C. 1169, 1177, 1180 (1981).

Accordingly we sustain respondent's determination under section 6651 (a) (1) for the taxable years at issue.

3. Additions to Tax Under Section 6654(a)

Respondent further determined an addition to tax under section 6654 (a) for each of the years in issue, asserting that petitioner failed to pay estimated tax. Section 6654(a) provides for an addition to tax "in the case of any underpayment of estimated tax by an individual". Estimated

income tax payments are used to provide for current payment of income taxes not collected through withholding. Generally, this addition to tax is mandatory, and there is no exception for reasonable cause. See Recklitis v. Commissioner, 75 T.C. 874, 913 (1988); Grosshandler v. Commissioner, 75 T.C. 1, 20-21 (1980). However, no additon to tax is imposed if one of the exceptions contained in section 6654 is met. See Recklitis v. Commissioner, supra at 913.

Petitioner has offerd no evidence to show that any of the statutory exceptions apply. Accordingly, we sustain respondent's determination under section 6654 (a) for the taxable years in issue.

We have reviewed the petitioner's other arguments and find them to be irrelevant or without merit.

Decisions will be entered for respondent.

FOOTNOTES

1. At trial petitioner alleged for the first time that he had suffered several theft losses during the years at issue. However, petitioner failed to substantiate any such losses and abandoned the argument on brief.

2. The equal protection principles of the Fourteenth Amendment are encompassed within the Fifth Amendment as applied to Federal legislation. See, e.g., Weinberger v. Wiesenfeld, 420 U.S. 636, 638 n.2 (1975); Hamilton v. Commissioner, 68 T.C. 603, 606 (1977)

3. Being accorded married status under the tax code is not always favorable. See U.S. General Accounting Office, Income Tax Treatment of Married and Single Individuals (Pub. No. GAO/GGD-96-175) (1996) (describing provisionbs in the tax code favoring single taxpayers over married taxpayers and vice versa); see also Cohen&Morris, "Tax Issues From 'Father Knows Best' to 'Heather Has Two Mommies'", 84 Tax Notes 1309 (Aug. 30, 1999) (describing the tax advantages and tax planning opportunities available to nonmarried couples).

4. Petitioner claims that the Federal tax laws specifically began to target homosexuals as a group after the enactment of the Defense of Marriage Act (DOMA), Pub. L. 104-199, 110 Stat. 2419 (1996). That law defines "marriage" in any act of Congress as a legal union "between one man and one woman" as husband and wife. The DOMA also defines the word "spouse" to mean only a person of the "opposite sex" who is a husband or wife. We decline to pass on the

constitutionality of the DOMA because it was not effective for the years at issue in this case.

5. Prior to 1948 each individual was taxed on his or her own income regardless of marital status. However, under the Supreme Court's decision in Poe v. Seaborn, 282 U.S. 101 (193), married couples in community property States were permitted to split their community income evenly for Federal tax purposes regardless of the amounts each actually earned. See Kellums v. Commissioner, 58 T.C. 556, 558-559 (1972), affd per curiam 474 F.2d 1399 (2d Cir. 1973).

6. We also note that petitioner, as a nonfiler, would not be entitled to the relief he now seeks even if he had been married at the relevant times. Married taxpayers who fail to file returns are not entitled to application of the married filing jointly tax rates. See Marinez v. Commissioner, T.C. Memo. 1998-199, affd. without published opinion (5th Cir. 1998); Collins v. Commissioner, T.C. Memo. 1989-167; see also Phillips v. Commissioner, 86 T.C. 433, 441 n. 7 (1986), affd.in part and revd. in part 851 F.2d 1492 (D.C. Cir. 1988).

Appendix B

UNITED STATES COURT OF APPEALS

For The Seventh Circuit
Chicago, Illinois 60604

Submitted March 12, 2001*
Decided April 6, 2001

Before

Hon. WILLIAM J. BAUER, Circuit Judge
Hon. MICHAEL S. KANNE, Circuit Judge
Hon. ILANA DIAMOND ROVNER, Circuit Judge

No. 00-3587

ROBERT D. MUELLER

Tax Petitioner-Appellant, Appeal from the United States Court No. 15289-98

v.

COMMISSIONER OF INTERNAL REVENUE, David Laro, Judge

Respondent-Appellee

ORDER

Robert D. Mueller failed to file federal income tax returns for tax years 1986-1995. The Commissioner of Internal Revenue issued a deficiency notice to Mueller, requiring that he pay over $249,000 in tax and $69,000 in additions under 26U.S.C &&6651(a)(1) and 6654. Mueller petitioned the Tax Court for a redetermination of the unpaid tax, and after a brief trial the Tax Court entered judgment for the Commissioner and upheld the calculations in the notice. Mueller now appeals that judgment, and we affirm.

On appeal Mueller does not argue that the Commissioner's tax and penalty computations are incorrect under current statutes and regulations. He instead argues that he and his domestic partner are "economic partners", and like a married couple should be afforded equivalent filing status. We have previously held, however, that taxing married couples and singles differently does not violate the Constitution, see Barter v. United States, 550 F.2d 1239, 1240(7th Cir. 1977)(per curiam); see also Druker v. Comm'r, 697 F.2d 46, 51 (2d Cir. 1982), and Mueller offers no reason why that analysis does not control here. Instead he spends a large portion of his brief arguing that the Defense of Marriage Act, Pub. L. 104-199, 110 Stat. 2419 (1996), which defines marriage as "only a legal union between one man and one woman as husband and wife," 1 U.S.C. &7, violates equal protection. The Tax Court correctly pointed out, however, that the Act was not in effect during the 10-year period for which Mueller was assessed deficiencies and, thus, is not at issue here.

Furthermore, Mueller offered no evidence in the Tax Court to rebut the presumption of correctness enjoyed by a notice of deficiency. See Pittman v. Comm'r, 100 F.3d 1308, 1313 (7th Cir. 1996). His evidence consisted of newspaper articles and internet sites discussing the status of homosexuals in various countries, but it did not establish that the Commissioner erred in computing the deficiencies. Moveover, his testimony only reinforced the appropriateness of the deficiencies and additions because he admitted earning substantial income during the relevant tax years of 1986-1995 but filing no returns.

Accordingly, we AFFIRM the judgment of the Tax Court.

- After an examination of the briefs and the record, we have concluded that oral argument is unnecessary. Thus, the appeal is submitted on the briefs and the record. See Fed. R. App. P. 34(a)(2).

Appendix C

United States House Of Representatives

July 12, 1996

H7481

This Act may be cited as the "Defense of Marriage Act."

I would have preferred the enactment of a domestic partner law. It would have provided all the protections that gays and lesbians have been seeking over the years. Failure of the State to assure gays and lesbians all the protections under the law require that we pass a domestic partner law. Unfortunately the State of Hawaii Legislature chose not to pass a domestic partner law and in doing so left the matter for the courts to decide.

Under this bill, H.R. 3396, same sex marriages, if and when allowed in Hawaii, will be denied equal protection of the laws insofar as the Federal Government is concerned. Even though it is a valid marriage in Hawaii as decided by the Hawaii Supreme Court, these couples will not be allowed to be considered as "spouses" when deciding such things as Federal retirement benefits, health benefits under Federal programs, Federal housing benefits, burial rights, privilege against testifying against partner in Federal trials, visitation rights at hospitals by partners, rights to family and medical leave to care for a partner, and many more programs which allow special rights to spouses. This exclusion would be extremely destructive of the principle of States rights in determining status.

H7482

As people understand, given today's rule, Federal law has a lot to do with their lives, so as far as Federal income tax is concerned and Social Security and pensions and other things, they will not be covered.

H7483

What people have said is, can I regularize this relationship so we are legally responsible for each other. Can I get to the point where if one of us gets very ill we will be protected in out ability to undertake financial responsibilities? Can we buy property jointly? Can we do the other things that people do? Can we decide that one will work and one might be in child rearing; there are people who have children in these relationships. That is what we are asking for.

When people get off the subject, allowing Hawaii to have gay marriages without penalizing them federally, and on to something wholly unrelated, polygamy, and attack the unrelated one, it is because they cannot think of any arguments to attack the first one.

H7484

But scapegoating gay men and lesbians for the failure of marriages in this society is very good politics but very terrible social analysis. That is what we are talking about.

The Federal Government currently extends benefits,

rights, obligations, and privileges on the basis of marital status. These include Social Security survivor and Medicare benefits, veterans' benefits, Federal health, life insurance and pension benefits and immigration privileges.

In fact, **the word marriage appears more than 800 times in Federal statutes and regulations, and the word spouse appears over 3,100 times.** However, these terms are never defined in the statutes and regulations. This bill proposes to do so.

H7486

I have been thinking a lot about this legislation this week because tomorrow, I am getting married. My fiance and I are going to vow to spend the rest of our lives together – no matter what lies ahead. For that commitment, we will enjoy all the rights and privileges the Government bestows on married couples – from tax breaks to Social Security benefits.

H7487

They are outraged that their tax money could be spent paying veteran's benefits or Social Security based on the recognition of same-sex marriages.

H7488

and if Members believe that the Congress of the United States of America and not an individual State has the authority and the sole jurisdiction and responsibility to decide the use of Federal taxpayer benefits, and if you do not believe it is fiscally responsible to throw open the doors of the U.S.

Treasury to be raided by the homosexual movement, then the choice is very clear, oppose the Frank amendment.

H7491

And that is, whether Members like to hear it or not, the last unfinished chapter of civil rights in this country.

It is an attempt to evade the basic question of whether the law of this country should treat homosexual relationships as morally equivalent to heterosexual relationships. That is what is at stake here.

Should the law express its **neutrality** between homosexual and heterosexual relationships? Should the law elevate homosexual unions to the same status as the heterosexual relationsjips on which the traditional family is based, a status which has been reserved from time immemorial for the union between a man and a woman.

Unfortunately, this bill went far beyond that simple affirmation, entering uncharted and very troubling constitutional territory, as well as being motivated on the part of some of its advocates by a gratuitous hostility toward gays and lesbians. At best, it is unnecessary – for reasons I'll explain later; at worst, it is dangerous – for reasons I'll explain.

H7492

I also recognize that gay and lesbian couples seek legal recognition and permanence for their relationships and the

rights and responsibilities that flow from those relationships. I hope this society, and its political and legal institutions, can move to accommodate the legitimate needs of gay and lesbian citizens in this respect. No one, I believe, would want, for example, to deny a claim of inheritance, or of participation in terminal health care decisions, for the life-long partner of a gay man or a lesbian woman. **Yet, by refusing as part of this legislation even to permit a formal study of disparate treatment of domestic partnerships in these areas,** the proponents of this legislation may reveal their real motivation.

and because so many advocates of this legislation, by their approach, seem primarily moved to demonstrate a gratuitous disrespect for some citizens based on their sexual orientation.

H7493

Federal policies could be dramatically affected by the Hawaii decision since the Federal Government generally recognizes State documents in granting benefits and privileges to married individuals. Veterans' benefits, labor policies, Federal health and pension benefits, and Social Security benefits are just a few of the areas that would be subjected to substantive revision if Congress does not act soon. **I think it would be wrong to take money out of the pockets of working families across America and use those tax dollars to give Federal acceptance and financial support to same-sex marriages.** Without the passage of the Defense of Marriage Act, this would be the case.

H7495

Unless this bill is passed establishing a Federal definition of marriage, all Americans will then be paying for benefits for homosexual marriages.

H7497

Mr. Chairman, the so-called Defense of Marriage Act should really be called the Republican Offense on People Who are Different Act because it is nothing more than blatant homophobic gay-bashing.

H7499

The fact of the matter is, Mr. Chairman, it is the prerogative, the authority, the responsibility, and **the sole jurisdictional power** of the Congress of the United States to determine the reach of Federal laws, Federal benefits, Federal regulations.

H7500

it will not have Federal tax benefits; it will not have pension benefits; it will not have testimonial privilege.

Appendix D

United States Senate

September 10, 1996

S10101

I believe we should not wait around to find out. What the Hawaiian court decides could also affect the operations of the Federal Government. It could have an impact upon programs like Medicare, Medicaid, veterans' pensions, and the Civil Service Retirement System.

S10102

In fact, States and local governments across the country are already dealing with this issue in their own ways. Some have enacted domestic partnership laws. In others, mayors and Governors have issued executive orders for public employers. They don't need help from Congress to address the subject. And Federal law, which has never recognized same-sex marriages, hardly needs clarification at this suspicious moment.

In his testimony, Professor Sunstein emphasized that the Supreme Court's recent opinion in Romer versus Evans, striking down an anti-gay referendum in Colorado, also casts doubt on the validity of this bill. Like the Colorado referendum struck down in Romer, this bill is "unprecedented * * * an oddity in our constitutional tradition drawn explicitly in terms of sexual orientation. Insofar as it draws the

particular line that it does, it risks running afoul of Romer's prohibition on laws based on animus against homosexuals."

S10103

Another reason this bill is needed now concerns Federal benefits. The Federal Government extends benefits, rights, and privileges to persons who are married, and generally it accepts a State's definition of marriage. This bill will help the Federal Government defend the traditional and commonsense definitions of the American people. Otherwise, if Hawaii or any other state, gives new meaning to the words "marriage" and "spouse", reverberations may be felt throughout the Federal Code.

The provisions of the Federal law do not, of course, regulate only the activities of the Federal Government. Federal law also regulates private persons. Consider the implication of the Family and Medical Leave Act of 1993.

Shortly before passage of this act in the Senate, I attached an amendment that defines "spouse" as "a husband or wife, as the case may be." **When the Secretary of Labor published his proposed regulations, a considerable number of comments were received urging that the definition of "spouse" be broadened to include domestic partners in committed relationships. However, when the Secretary issued the final rules, he stated that the statutory definition of "spouse" and the legislative history of the act precluded such broadening of the definition.**

S10104

Also, it says for Federal benefits and Federal benefits purposes, we define marriage as a legal union between male and female, and we define spouse as a member of the opposite sex.

S10105

The Supreme Court subsequently acted, and here we are faced with the exact same arguments, the very same arguments being made against domestic relations of another order. When two people decide to come together, it seems to me it should be a matter for them, their conscience, their God, and indeed that is, indeed, is inappropriate to intervene in that decisionmaking.

As Dr. King stated so eloquently years ago, our Declaration of Independence was not just a matter of rhetoric and not an exercise in hypocrisy and not just words trotted out on suitable patriotic occasions, and then ignored while we go about the business of real life. **Dr. King knew that our Declaration of Independence was indeed a "declaration of intent," and that our history has been a history of making progress, albeit sometimes in fits and starts, but making progress toward full implementation of those American values for all of us.**

And that we allow, in the final analysis, for the opportunity of every American to enjoy the same protections under the law as every other American and that we do not single out gay and lesbian Americans for second class status and as second class citizens by legislation specifically to their

domestic relations when we have never legislated in that area before in this body.

S10106

A failure to pass this bill, if the Hawaii court rules in favor of same-sex marriages, will create, through the full faith and credit provision of the Constitution, a whole group of new beneficiaries – no one knows what the numbers would be – tens of thousands, hundreds of thousands, potentially more – who will be beneficiaries of newly created survivor benefits under Social Security, Federal retirement plans, and military retirement plans. It will trigger a whole group of new benefits under Federal health plans. And not only will it trigger these benefits for the Federal Government, but under the full faith and credit provision of the Constitution, it will impose – through teacher retirement plans, State retirement plans, State medical plans, and even railroad retirement plans – a whole new set of **benefits and expenses which have not been planned or budgeted for under current law.**

S10107

Obviously, the results of this bill will not be to preserve anything, but will serve to attack a group of people out of various motives and rationales, and certainly out of lack of understanding and a lack of tolerance, and will only serve the purposes of the political season.

S10108

In the past few years, legislative attacks on gay people have increased in frequency and scope, Trying to keep gay men and women out of the armed services. Trying to keep AIDS educational materials free of any mention of homosexuality. Trying to take away the children of gay parents.

This bill does not bring people together. In fact, it does the exact opposite. It divides Americans. **It is a stark reminder that all citizens who play by the rules, who pay their taxes and who contribute to the economic, social and political vibrancy of this great melting pot do not have equal rights.**

S10110

The impact of the case, and in other areas of governmental action adversely affecting gays, cannot be clearly discerned. Despite the Court's use of the rational basis standard, the opinion appears to view with skepticism the differential treatment of homosexuals as a class. At the least, we can say that the case requires the DOMA, if it becomes law, to be evaluated under the equal protection clause. That evaluation need not be fatal to the law. The proposal does adversely classify homosexuals as a class in defining what status, under the full faith and credit clause, States must accord.

S10111

As I am sure my colleagues are aware, although many other Americans may not be, the Federal Government extends certain benefits and privileges to persons who are married

Indeed the word "marriage" appears in more than 800 sections of the Federal statutes and regulations, while the word "spouse" appears more than 3,100 times.

Moreover. I urge my colleagues to think of the potential cost involved here. How much is it going to cost the Federal Government if the definition of "spouse" is changed?

I do not think, though, that it is inconceivable that the costs associated with such a change could amount to hundreds of millions of dollars -- if not billions – of Federal taxpayer dollars.

S10112

I believe it is about hurting a whole group of people for absolutely no reason whatsoever. No one group in this country that fights for fairness for gays and lesbians has asked us to legalize gay marriage here in the U.S. Senate. **Not one Member of the House or Senate is proposing a bill that would legalize gay marriage or give benefits to domestic partners.**

S10115

The Defense of Marriage Act does not prevent same-sex marriages at the State level; it merely defines marriages for Federal purposes, **thereby establishing legal certainty and uniformity in federal benefits, rights and privileges for married persons**.

S10116

Though this bill is short in length – just 2 ½ pages in fact – it is long in substance.

Since the word "marriage" appears in more than 800 sections of Federal statutes and regulations, and the word "spouse" appears more than 3,100 times, Federal benefits, such as Veterans, Health and Social Security, would all be subject to revision. Given the budget difficulties we are currently facing, it would be an understatement to say that this could have an enormous financial impact on our country. This troubles me deeply.

S10117

In addition, marriage most certainly should not be just another means of securing government benefits. Yet this is one of the arguments that proponents of same-sex marriage use to justify this unprecedented social experiment. They claim that laws restricting marriage to persons of the opposite sex are discriminatory in part because, after all, same-sex partners are not entitled to health and other benefits extended to dependent spouses. I can think of few worse reasons for

getting married. And I can think of few worse times to talk about creating another entitlement to government benefits.

S10119

It should come as little surprise that, like anyone else, gay men and women would like to live their lives without being defined only by their sexual orientation.

S10122

But homosexuality has existed throughout human history. And even though medical research hasn't succeeded in telling us why a small but significant number of our fellow human beings have a different sexual orientation, the clear weight of serious scholarship has concluded that people do not choose to be homosexual, any more than they choose their gender or their race. **Or any more than we choose to be heterosexual.**

Most Americans accept the basic tenet that discrimination for any reason is wrong. We grow uncomfortable, however, with some of its implications. **The question we face now is whether that discomfort warrants continued discrimination.**

S10123

But we have to remember today that government has a role only in the civil institution, separate and distinct from marriage as a religious ceremony.

And, Mr. President, when that civil institution is separated from a religious ceremony, and that civil institution is recognized by a sovereign State, then denying Federal recognition of that union amounts to nothing short of indefensible discrimination.

BUT WE'VE MADE THE GREATEST STRIDES FORWARD WHEN INDIVIDUALS, FACED WITH THEIR MOMENT IN HISTORY, WERE NOT AFRAID TO ACT.

President Lyndon Johnson often said, "It's not hard to do what's right, it's hard to know what's right."

S10124

Supporters of DOMA say a Federal definition of marriage is needed because Federal benefits are at risk. This is making a mountain out of a mole hill. Even if the same percentage of homosexual Americans were married as heterosexual Americans, 40 percent, the threat to the Treasury would be modest. Approximately 5 percent of the population is gay or lesbian. Therefore, we are only talking about 2 percent of the population that could possibly benefit if same sex marriages were recognized. **Further, Congress can choose to exclude same-sex partners from any Federal benefit it chooses, as we did with the family and medical leave legislation.**

Not once has a gay or lesbian Oregonian come to me and asked that the Federal Government endorse their lifestyle.

THE CONSTITUTION DOESN'T GIVE CONGRESS OR THE STATES THE POWER TO SPECIFICALLY EXCLUDE AN INDIVIDUAL OR GROUP OF INDIVIDUALS FROM THE ENJOYMENT OF LIFE, LIBERTY, OR THE PURSUIT OF HAPPINESS.

S10125

At the same time there are many partners of same-sex relationships who have loving and committed relationships over many years. The question arises, how do we acknowledge the existence of these committed relationships – the partner's desire to be at the bedside of his or her dying partner or to see that a partner receives the benefits that accrue to a survivor of a long and loving relationship.

One might point out that the only way we can do that now is through marriage. **There ought to be another way,** and I am prepared to look for that other way, but I do not see marriage as flexible enough an institution to accept such recognition at this time. Too many people in too many places of too many faiths see it as the state that exists between a man and a woman, and they see same-sex marriages as an incomprehensible trespass.

Appendix E

The
University
Of Chicago
Hospitals

Date: November 13, 2000

To: Mr. Robert Mueller

From: Mary Ann Nolan
Director, Benefits

Re: Domestic partner Health Plan Benefits

You and your domestic partner are currently enrolled in the Hospitals' health plan. We have recently reviewed the Internal Revenue Code regulations on taxation of domestic partner benefits and have determined that both the employee and employer premiums are subject to taxes.

Currently, you do pay tax on the employee portion of the premium, attributed to the addition of your domestic partner, by deducting it on an after tax basis. But, you do not currently pay taxes on the Hospitals' portion of the premium. You will now be required to do so.

The amount that will now be taxed is equal to the difference between the Hospital's premium for single and family coverage. For calendar year 2000, you will have to pay taxes

on $2,971.92 (this amount will be added to your gross income).

Payroll will automatically deduct the appropriate Social Security (FICA) tax. Youo will have two options to pay the additional federal and state taxes. You may have the taxes deducted over the remaining payperiods of this calendar year; or you may make the adjustment when you file your 2000 tax return. If you wish to have additional taxes deducted this calendar year, please complete the attached form and submit it to the Payroll Department, room W04.

As of January 1, 2001, the Hospitals will apply the appropriate taxes for your domestic partner benefits on a quarterly basis.

If you have any questions, please call me at extension 2-0203.

Enclosure